UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

CALLOWAY PAYNE,

: CASE NO. 1:11-CV-02446

Petitioner,

:

vs. : OPINION & ORDER

[Resolving Docs. $\underline{1}, \underline{7}, \underline{9}$]

DAVID BOBBY,

.

Respondent.

:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On November 10, 2011, Petitioner Calloway Payne filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On February 24, 2012, the Government opposed Payne's petition. Under Local Rule 3.1, the matter was referred to Magistrate Judge Kenneth S. McHargh. On January 28, 2013, Magistrate Judge McHargh issued a Report and Recommendation that recommended this Court deny Payne's petition.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection.^{4/}
Parties must file any objections to a Report and Recommendation within fourteen days of service.^{5/}

 $[\]frac{1}{2}[\text{Doc. } \underline{1}.]$

 $[\]frac{2}{2}$ [Doc. 7.]

 $[\]frac{3}{2}$ [Doc. 9.]

^{4/}28 U.S.C. § 636(b)(1)(C).

⁵/<u>Id.</u>; Fed. R. Civ. P. 72(b)(2).

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Gwin, J.

Failure to object within this time waives a party's right to appeal the district court's judgment.

Absent objection, a district court may adopt the magistrate judge's report without review. $\frac{7}{2}$

In this case, Payne has not filed any objection to the Report & Recommendation. Moreover,

having conducted its own review of the record and the parties' briefs, the Court agrees with the

recommendation of Magistrate Judge McHargh that the petition should be dismissed.

Accordingly, the Court **ADOPTS** Magistrate Judge McHargh's Report and Recommendation

and incorporates it fully herein by reference, and **DENIES** Payne's petition for a writ of habeas

corpus. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this

decision could not be taken in good faith, and no basis exists upon which to issue a certificate of

appealability.8/

IT IS SO ORDERED.

Dated: February 21, 2013

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

⁶/Thomas v. Arn, 474 U.S. <u>140, 145 (1985)</u>; <u>United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981)</u>.

 $[\]frac{7}{2}$ See Thomas, 474 U.S. at 149.

^{8/}28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).